

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ANTHONY VOGELSANG,

Defendant and Appellant.

C070280

(Super. Ct. No. 62096408)

Defendant Christopher Anthony Vogelsang appeals from a judgment entered after his motion to suppress evidence was denied. Defendant pled guilty to possession of methamphetamine for sale and two other charges. The trial court sentenced him to nine years and eight months.

On appeal, defendant contends the trial court erred in denying his motion to suppress the evidence of the methamphetamine found in a bag on his motorcycle. Defendant argues that the probable cause to search his motorcycle was the result of: (1) an unlawful detention; and (2) the officer's

coercive demand that he admit having drugs. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2010, Sergeant Brad McKenzie of the Placer County Sheriff's Department was traveling on a freeway at 70 miles per hour when defendant, on his motorcycle, came up beside the patrol vehicle, waved, and continued on. At 12:08 a.m., Sergeant McKenzie made a traffic stop after pacing defendant at 80 miles per hour. Sergeant McKenzie noticed defendant exhibiting signs of methamphetamine intoxication.

Between 12:08 a.m. and 12:14 a.m., Sergeant McKenzie asked defendant if he had a valid driver's license. Defendant stated he did not have a motorcycle driver's license and was not sure if his driver's license was suspended. Defendant also told Sergeant McKenzie where he was coming from and admitted the use of methamphetamine a couple days prior and what house he got his methamphetamine from.

At 12:12 a.m., based on Sergeant McKenzie's observation of defendant's methamphetamine intoxication, Sergeant McKenzie requested a back up unit to assist him with a search.

At 12:14 a.m., Sergeant McKenzie made an inquiry to dispatch on defendant's status.

At 12:15 a.m., Deputy Josh Tindall arrived as a back up unit. Around the same time, dispatch informed Sergeant McKenzie that defendant did not have a motorcycle endorsement.

Sergeant McKenzie asked defendant if he had any drugs on his person or on the motorcycle. Defendant admitted he had

marijuana. Sergeant McKenzie asked defendant if he could search the bag on defendant's motorcycle. Defendant replied, "'[w]ell I'm not real sure if you can search.'" Sergeant McKenzie then said, "'[y]ou need to be completely honest with me. If you have any drugs in your vehicle [sic], you need to let me know.'" Defendant replied, "'I have the dope in the car [sic],'" and pointed to the bag. Sergeant McKenzie then conducted a search of the bag and found marijuana and methamphetamine.

At the hearing on the motion to suppress, the magistrate denied the motion, reasoning that "there was reasonable suspicion to initially stop the motorcycle, detain it for the speeding violation. The length of the detention does not appear to have been unreasonable. I find given the totality of the circumstances the fact that the defendant exhibited objective signs of being under the influence of possibly methamphetamine, the fact that the defendant pointed to his bag and said, 'That's where the dope was,' given all of those factors, I found there was probable cause for the officer to believe that the bags contained contraband and therefore no warrant was required"

DISCUSSION

Defendant contends the magistrate erred in denying his motion to suppress. Defendant does not dispute that his admission to Sergeant McKenzie that there was "dope" in the bag on his motorcycle gave the officer probable cause to search the bag. Instead, he "contends the 'probable cause' [to search the bag] was the result of [an] unlawful detention, coupled [with

Sergeant] McKenzie's coercive demand that [defendant] admit having drugs when McKenzie's search of the motorcycle was obviously imminent." We disagree.

"In reviewing the trial court's ruling on the suppression motion, we uphold any factual finding, express or implied, that is supported by substantial evidence, but we independently assess, as a matter of law, whether the challenged search or seizure conforms to constitutional standards of reasonableness." (*People v. Hughes* (2002) 27 Cal.4th 287, 327.)

To the extent defendant contends the probable cause to search the bag on his motorcycle was the "fruit" of a detention that was unlawful because it was unreasonably long, we disagree. "[W]hile a police officer may stop a motorist for a traffic violation, the detention cannot be prolonged beyond the time period necessary to address the violation. [Citation.] There is no hard-and-fast limit as to the amount of time that is reasonable; rather, it depends on the circumstances of each case." (*People v. Gallardo* (2005) 130 Cal.App.4th 234, 238.)

There is no indication here that the detention up until defendant admitted having "dope" was unreasonably prolonged. Defendant concedes the traffic stop made at 12:08 a.m. that night for speeding was valid. During the six minutes between the stop and the inquiry to dispatch on defendant's status at 12:14 a.m., Sergeant McKenzie testified that they had a conversation regarding the status of his license, prior use of methamphetamine, and the house he got it from. At 12:15 a.m., a minute after Sergeant McKenzie made the inquiry, dispatch

confirmed defendant's license was invalid and the back up unit arrived. Defendant admitted he had "dope" right after Sergeant McKenzie asked if he had any drugs. A total of around seven minutes between the stop and the admission does not show a detention that was unreasonably prolonged. The trial court correctly reasoned that "there was reasonable suspicion to initially stop the motorcycle, detain it for the speeding violation. The length of the detention does not appear to have been unreasonable."

To the extent defendant contends that Sergeant McKenzie's statement to him, "[y]ou need to be completely honest with me. If you have any drugs in your vehicle [sic], you need to let me know," was a "form of psychological coercion because the totality of the circumstances brought to bear upon [defendant] were such as to overbear his will to resist and brought about a confession not freely self-determined," we also disagree.

"The question posed by the due process clause in cases of claimed psychological coercion is whether the influences brought to bear upon the accused were "such as to overbear petitioner's will to resist and bring about confessions not freely determined." [Citation.]' [Citation.] In determining whether or not an accused's will was overborne, 'an examination must be made of "all the surrounding circumstances--both the characteristics of the accused and the details of the interrogation. . . ."' [¶] . . . [O]ur decision must be based on the totality of the circumstances." (*People v. Thompson* (1990) 50 Cal.3d 134, 166.)

During the traffic stop, when Sergeant McKenzie asked if defendant had any drugs on himself or his motorcycle, he replied that he had marijuana. Sergeant McKenzie then asked to search defendant's bag. Defendant replied that he was not sure if Sergeant McKenzie could search the bag, which prompted Sergeant to say "[y]ou need to be completely honest with me. If you have any drugs in your vehicle [sic], you need to let me know." Defendant argues that Sergeant McKenzie's phrasing was an "order directing [defendant] that he *needed* to be honest with [Sergeant] McKenzie . . . [which] was a form of psychological coercion because the totality of the circumstances brought to bear upon [defendant] were such as to overbear his will" and caused defendant to admit he had "dope." We conclude, however, that there was nothing coercive in Sergeant McKenzie's use of the word "need" in his statement to defendant, such that defendant's will was overborne. There was no evidence presented that indicates Sergeant McKenzie used a commanding tone or displayed a weapon to psychologically coerce and overbear defendant's will to confess he had methamphetamine. (See *United States v. Drayton* (2002) 536 U.S. 194, 204 [153 L.Ed.2d 242, 253] [ruling that the officers' questioning of defendants was not coercive because there was no overwhelming show of force or authoritative tone].)

DISPOSITION

The judgment is affirmed.

ROBIE, Acting P. J.

We concur:

BUTZ, J.

HOCH, J.